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Supreme Court, U.S.
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No.

In the Supreme Court of the United States

THE STATE OF ILLINOIS,

Petitioner,

vs.

JOSE TORRES,

Respondent.

On Petition for a Writ of Certiorari to the Appellate Court of Illinois

PETITION FOR WRIT OF CERTIORARI

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ISSUES PRESENTED FOR REVIEW

1. Whether the running of a warrant check on an individual is not a Fourth Amendment search since the information obtained in the warrant check consists of matters of public record in which the suspect possesses no reasonable expectation of privacy.

2. Assuming a police officer's decision to run a warrant check implicates the Fourth Amendment, whether, pursuant to *Hiibel v. Nevada*, there is no need for independent reasonable suspicion to conduct a warrant check of a suspect's name that was legitimately obtained during a valid *Terry* stop, because, absent a warrant check, a police officer's authority to ascertain a suspect's name is pointless unless the police officer personally knows the background of the suspect.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, the People of the State of Illinois, prays for a Writ of Certiorari to review the judgment and order of the Illinois Appellate Court, which was entered on March 19, 2004.

OPINIONS BELOW

The opinion of the Illinois Appellate Court, which reversed the trial court's denial of respondent's motion to suppress, and ultimately reversed respondent's conviction on the basis that police officers violated his Fourth Amendment rights in running a warrant check during their investigation of an alleged domestic violence altercation, was entered on March 19, 2004, and is reported under *People v. Torres*, 347 Ill. App. 3d 252, 807 N.E.2d 654 (2004). The opinion is included in Appendix A.

The order of the Illinois Supreme Court denying petitioner's Petition for Leave to Appeal this judgment was entered on October 6, 2004, under docket No. 98301. The order is included in Appendix B (B-1, App. 20).

STATEMENT OF JURISDICTION

The order and judgment of the Illinois Appellate Court was entered on March 19, 2004. No Petition for Rehearing was filed. A Petition for Leave to Appeal was filed in the Illinois Supreme Court on April 23, 2004. On June 29, 2004, Petitioner filed a motion to cite the case of *Hiibel v. Nevada*, 124 S. Ct. 2451, 159 L. Ed. 2d 292 (2004) as additional authority. The motion is included in Appendix B (B-2, App. 21). Respondent filed a response to petitioner's motion to cite additional authority. See Appendix B (B-3, App. 26). On July 13, 2004, the Illinois Supreme Court entered an order allowing petitioner's motion to cite additional authority. See Appendix B (B-4, App. 31). The Illinois Supreme Court denied petitioner leave to

appeal on October 6, 2004. See Appendix B (B-1). No Petition for Rehearing was filed in the Illinois Supreme Court. This Petition for a Writ of Certiorari is filed within 90 days of the Illinois Supreme Court's order denying the petition for leave to appeal, as required by Rule 13(1) of the rules of the Supreme Court. The decision of the Illinois Appellate Court was based on federal constitutional law, namely, the Fourth Amendment, and therefore, the jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized. U.S. Const., amend. IV.

The Fourteenth Amendment to the United States Constitution requires the States to secure these rights. It provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Const., amend. XIV.

STATEMENT OF THE CASE

Respondent, Jose Torres, was charged with two counts of unlawful use of a weapon, and filed a motion to suppress the evidence against him, asserting that he was subjected to an illegal search and seizure. (Appendix A, App. 2). During the hearing on the motion, Officer Joe Kurpiel testified that, on February 6, 2002, at approximately 10 p.m., he saw a male, later identified as respondent, and a female, later identified as Rosea Cordero, respondent's girlfriend, engaged in what appeared to be a "domestic altercation" while sitting in a truck in the parking lot of a gas station. (Appendix A, App. 2). Officer Kurpiel explained that respondent's hands were "flying" in Ms. Cordero's direction while Ms. Cordero sat in a "very submissive" position. (Appendix A, App. 2). The officer testified that, in his opinion, the couple was not having a mere conversation, but was engaged in an argument. (Appendix A., App. 2).

In response, Officer Kurpiel and his partner approached the couple. (Appendix A, App. 2). Officer Kurpiel went to the passenger side of the truck and asked Ms. Cordero if everything was okay. (Appendix A, App. 3). She replied that she and respondent were arguing because he was seeing another woman, but she was nonetheless okay. (Appendix A, App. 3). While Officer Kurpiel spoke with Ms. Cordero, his partner simultaneously approached the driver's side of the car and spoke to respondent. (Appendix A, App. 3). According to Officer Kurpiel, his partner ascertained respondent's name and asked respondent to step out of the car. (Appendix A, App. 3). Officer Kurpiel subsequently ran a warrant check on respondent at his partner's request, but did not have an opportunity to tell his partner that Ms. Cordero claimed to be "okay" before completing this task. (Appendix A, App. 3). The warrant check revealed that respondent had a bond forfeiture warrant for the offense of driving under the influence of alcohol as a result of his failure to appear at a scheduled court date. (Appendix A, App. 3). A search was subsequently conducted and revealed an ammunition "magazine" in respondent's pocket and a fully

loaded and cocked .38 caliber semiautomatic handgun in the console of the truck. (Appendix A, App. 3).

A different version of events was related by Ms. Cordero. She stated that she and respondent were sitting together in the truck after purchasing cigarettes at the gas station. (Appendix A, App. 4). She was driving because respondent's license was suspended, and respondent was sitting in the passenger's seat. (Appendix A, App. 4). Ms. Cordero denied that she and respondent were arguing, and likewise denied that respondent made any gestures with his hands while they sat in the truck. (Appendix A, App. 4). In any event, Ms. Cordero stated that an officer approached the driver's side window where she was seated, asked her if she was okay, requested her driver's license and proof of insurance, and asked her to step out of the truck. (Appendix A, App. 4). When she complied, the officer searched the vehicle without seeking permission. (Appendix A, App. 4).

Respondent's testimony essentially mirrored Ms. Cordero's. He added that a police officer approached the passenger side of the truck and asked him to step out. (Appendix A, App. 5). The officer then patted him down and searched the truck. (Appendix A, App. 5). The officer did not ask respondent his name or request that the warrant check be conducted until his search uncovered the gun and magazine. (Appendix A, App. 5).

At the close of testimony, the trial court denied the motion to suppress. In doing so, the court stated that the officer's testimony, that respondent, "a very large male," and Ms. Cordero, "a very young smaller female," were involved in a "heated discussion or argument or disagreement," was clear and convincing, and thus concluded that the police officers properly approached to conduct a *Terry* stop. (Appendix C, App. 35). The trial court specifically found that, "at that time the officers did have a right to investigate to do a name check." (Appendix C., App. 35). The matter proceeded to a bench trial in which the parties stipulated to the evidence presented in the

motion to suppress. (Appendix A, App. 5). Respondent was subsequently found guilty of unlawful use of a weapon, after the court declared that it found respondent's testimony, along with Ms. Cordero's, to be wholly incredible. (Appendix C, App. 36). Respondent was sentenced to 18 months' probation. (Appendix A, App. 5).

On appeal, the Appellate Court reversed the trial court's judgment with respect to respondent's motion to suppress and likewise reversed respondent's conviction. (Appendix A, App. 19). The court held that, while the police officers properly approached the vehicle and obtained respondent's name, they exceeded the scope of the initial *Terry* stop when they ran a warrant check on respondent after Ms. Cordero informed them that she was "okay," thus completely alleviating the officers' suspicion that a domestic violence altercation might occur and terminating the officers' justification for the investigative stop. (Appendix A, App. 18-19).

REASONS FOR GRANTING THE WRIT

In the case of *People v. Harris*, 207 Ill. 2d 515, 802 N.E. 2d 219 (2003), *pet. for cert. pending* (No. 03-1224), the Illinois Supreme Court erroneously assumed that a warrant check constitutes a search under the Fourth Amendment and held that police officers may not run a warrant check on the passenger in a vehicle stopped for a traffic violation unless the officers have independent reasonable and articulable suspicion that the passenger has committed, is committing or is about to commit a crime. In the instant case, the Illinois Appellate Court extended the fundamentally flawed reasoning pronounced in *Harris* to *Terry* stops. Based on the determination that there was reasonable and articulable suspicion that respondent had or was about to commit a domestic violence offense, the Illinois Appellate Court found that the police officers properly conducted a *Terry* stop and legitimately ascertained the respondent's name during the stop. However,

the Illinois Appellate Court, relying on *Harris*' faulty analysis, failed to recognize that a warrant check is not a search and erroneously found that the Fourth Amendment did not permit the officers to run a warrant check of respondent's name because just prior to the running of the warrant check, respondent's girlfriend said she was okay. The Appellate Court, therefore, found that the officers needed independent reasonable and articulable suspicion of past wrongdoing in order to conduct the warrant check.

Contrary to the Illinois Appellate Court's decision, Fourth Amendment jurisprudence unquestionably supports the determination that a warrant check of the suspect's name is a reasonable and necessary component of a *Terry* stop. A warrant check is nothing more than the computerized retrieval of public records and does not in any way constitute a Fourth Amendment search. Under a Fourth Amendment analysis, a warrant check, by definition, is not a search or a seizure of a suspect's person, house, papers or effects. U.S. Const., amend. IV. Significantly, a warrant check reveals the existence of an arrest warrant that was judicially issued based on a probable cause finding of either the commission of a criminal offense or the failure to appear in court to answer to pending criminal charges. Therefore, once a name has been legally ascertained, even the most expansive interpretation of the Fourth Amendment does not demand independent reasonable and articulable suspicion to run a warrant check. Any holding to the contrary would, in essence, give a fugitive an expectation of privacy in the public record of the warrant that was executed because he committed a crime and failed to appear in court. Such an expectation of privacy is simply not one that society is prepared, or should be required, to honor.

Even if the running of a warrant check is found to implicate the Fourth Amendment, in the context of a valid *Terry* stop, there is still no legitimate reason to require that an officer possess an independent Fourth Amendment justification to run

a warrant check of the suspect. In fact, the Appellate Court's decision espousing this rule runs afoul of the principles set forth in the recent case of *Hiibel v. Nevada*, 159 L. Ed. 2d 292, 124 S. Ct. 2451 (2004). In *Hiibel*, this Court explicitly recognized that, under Fourth Amendment jurisprudence, questions concerning a suspect's identity are a routine and accepted part of many *Terry* stops, because "'the ability to briefly stop [a suspect], ask questions, or check identification in the absence of probable cause promotes strong governmental interests in solving crimes and bringing offenders to justice.'" *Hiibel*, 159 L. Ed. 2d at 302-03, 124 S. Ct. at 2458, citing *United States v. Hensley*, 469 U.S. 221, 229, 83 L. Ed. 2d 604, 612, 105 S. Ct. 675, 680 (1985). This Court, therefore, concluded that the request for identity has an immediate relation to the purpose, rationale and practical demands of a *Terry* stop. In making this determination, this Court reasoned that an individual's privacy right to information regarding his name was outweighed by the important governmental interest in obtaining identity information, because "knowledge of identity may inform an officer that a suspect is wanted for another offense, or has a record of violence or mental disorder." *Hiibel*, 159 L. Ed.2d at 303, 124 S. Ct. at 2458.

Unless the holding in *Hiibel* is intended to be strictly limited to rural areas where law enforcement personnel are likely to personally know, or at least know the background of each person detained, the *Hiibel* reasoning must logically give law enforcement officers the authority to run a warrant check of the suspect's name. The Appellate Court's requirement that the police officers have an independent Fourth Amendment justification to run a warrant check of a name legitimately ascertained by the police has the practical effect of undermining a police officer's ability to conduct a complete and effective *Terry* investigation in urban and suburban settings, where police officers are highly unlikely to personally know the background or reputation of a suspect.

Therefore, consistent with this Court's decision in *Hiibel*, common sense dictates that a warrant check of a suspect has an immediate relation to the purpose, rationale and practical demands of a *Terry* stop. The execution of a warrant check aids the police in confirming or dispelling their suspicions of criminal activity, or reveals information that the suspect is wanted for another offense or has a record of violence or mental disorder. Clearly, a warrant check is a legitimate tool that helps officers achieve these investigative goals with minimal intrusion. The time needed to complete a computerized records check is negligible and does not fundamentally change the scope or the temporary nature of a *Terry* stop. Therefore, pursuant to this Court's reasoning enunciated in *Hiibel*, a warrant check should be considered a reasonable and necessary component of a law enforcement officer's investigatory authority under *Terry v. Ohio*, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968) and should not have to be supported by independent reasonable and articulable suspicion of criminal activity.

However, federal and state courts that have considered the propriety of warrant checks under the Fourth Amendment prohibition against unreasonable searches and seizures have come to varying and conflicting conclusions, even when the warrant check is conducted in the context of a valid *Terry* stop. Like the Appellate Court in this case, some courts have determined that the running of a warrant check must be supported by independent reasonable suspicion of some wrongdoing. However, other courts have concluded that a warrant check is *per se* reasonable during a valid *Terry* stop in order to protect an officer's safety. The conflict among the lower courts can be explained by the fact that these courts have failed to consider the threshold question of whether the running of a warrant check constitutes a Fourth Amendment search. Most courts have also failed to recognize that, because the identity of a suspect has an immediate relation to the purpose of a *Terry* stop, the running of a warrant check is a

corollary component of the authority to request a suspect's name, pursuant to *Hiibel*, and also serves to effectuate the rationale and practical demands of the stop. Hence, it is clear that this Court's intervention is needed in order to resolve the conflict that has surfaced across the nation with respect to this important and recurring question of federal law. This Court, in *Hiibel*, implicitly stated that the running of a warrant check should be considered a routine and accepted part of a *Terry* stop. Petitioner urges this Court to use this opportunity to directly address this question in order to ensure uniformity among the lower courts, to provide law enforcement officers with clear guidance and to secure a police officer's ability to conduct a complete and effective *Terry* investigation in urban and suburban settings.

A. THE FEDERAL AND STATE AUTHORITIES THAT HAVE CONSIDERED THE PROPRIETY OF WARRANT CHECKS IN CERTAIN SITUATIONS HAVE FAILED TO CONSIDER THE THRESHOLD QUESTION OF WHETHER THE RUNNING OF A WARRANT CHECK CONSTITUTES A FOURTH AMENDMENT SEARCH.

When determining whether government conduct constitutes a Fourth Amendment search, this Court has uniformly instructed that courts must first consider one threshold question: Has the government's conduct violated a citizen's legitimate expectation of privacy which society is prepared to recognize as justified and reasonable? See *Katz v. United States*, 389 U.S. 347, 361, 19 L. Ed. 2d 576, 588, 88 S. Ct. 507, 517 (1967) (Harlan, J., concurring); *Rakas v. Illinois*, 439 U.S. 128, 143 n. 12, 58 L. Ed. 2d 387, 402 n. 12, 99 S. Ct. 421, 430 n.12 (1978). In the case at bar, the Illinois Appellate Court declared that the running of a warrant check constitutes a Fourth Amendment search, and thus held that police officers cannot run warrant checks without independent reasonable

and articulable suspicion of criminal activity. In making this judgment, the Illinois Appellate Court relied on Illinois Supreme Court authority, namely, the recent case of *People v. Harris*, 207 Ill. 2d 515, 802 N.E. 2d 219 (2003), *pet. for cert. pending* (No. 03-1224), which held that police officers may not run a warrant check on the passenger in a vehicle stopped for a traffic violation unless the officers have independent reasonable and articulable suspicion that the passenger has committed, is committing or is about to commit a crime.

Yet, in rendering these decisions, Illinois courts have failed to consider the threshold question of Fourth Amendment jurisprudence established by this Court in *Katz* and its progeny. Indeed, nowhere in the *Harris* or *Torres* decisions does the majority consider whether a citizen possesses a reasonable expectation of privacy in information ascertained through a warrant check. The courts likewise neglect to consider whether society is prepared to recognize a fugitive's privacy interest in information regarding his status as a fugitive. Illinois courts have simply assumed that a warrant check implicates the Fourth Amendment and, therefore, have recognized an individual's privacy interests in his or her status as a fugitive without thorough consideration of whether the Fourth Amendment was intended to afford such protections.

Illinois, however, does not stand alone in this assumption. The Illinois courts' assertion that a warrant check implicates the Fourth Amendment, and therefore, may only be conducted in the face of a reasonable and articulable suspicion of criminal activity, finds support in precedent from other jurisdictions, which have similarly failed to consider the threshold question set forth in *Katz*. For example, in *Brown v. State*, 124 Md. App. 183, 194, 720 A.2d 1270, 1276 (1998), the Maryland Appellate Court held that, if a person is stopped on suspicion of criminal activity and the investigation reveals that no offense has occurred, the detention may not be extended five minutes in order to facilitate a warrant check without reasonable suspi-

cion of past or current criminal activity. Similarly, in *Sikes v. State*, 323 S.C. 28, 31-32, 448 S.E.2d 560, 563 (1994), the South Carolina Supreme Court held that reasonable suspicion that a car was stolen or driven by an uninsured motorist did not create reasonable suspicion to conduct a warrant check on a passenger.[1]

Conversely, other courts, also neglecting to decide whether the Fourth Amendment is actually implicated in warrant check situations, have nevertheless concluded that a warrant check is *per se* appropriate in a valid *Terry* stop as an indispensable investigatory tool. *United States v. McRae*, 81 F. 3d 1528, 1536 n.6 (10th Cir. 1996); *State v. Ybarra*, 156 Ariz. 275, 276, 751 P.2d 591, 592 (1987), citing *Petty v. State*, 696 S.W.2d 635 (Tex. 1985); *State v. Madrigal*, 65 Wash. App. 279, 283, 827 P.2d 1105, 1107 (1992).[2] In reaching this conclusion, these

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[1] See also *United States v. Boyce*, 351 F.3d 1102, 1107 (11th Cir. 2003) (where warrant check was conducted at conclusion of traffic stop investigation, court held that police officer should have let the defendant go unless he possessed a reasonable and articulable suspicion of some other criminal wrongdoing); *People v. Jackson*, 39 P.3d 1174, 1190 (Colo. 2002) (consensual encounter escalated into improper Fourth Amendment seizure once officer took passenger's driver's license and ran a warrant check without reasonable suspicion of criminal activity); *State v. Johnson*, 805 P.2d 761 (Utah 1991) (running a warrant check on passenger without reasonable suspicion of criminal activity exceeded appropriate scope of detention); *State v. Chelly*, 94 Wash. App. 254, 970 P.2d 376, 277 (1999) (detention can properly be extended to permit warrant check where facts give rise to the belief that the person stopped provided false identity information).

[2] See also *United States v. Christian*, 356 F. 3d 1103, 1107 (9th Cir. 2004) (holding that police officers should be able to learn a suspect's identity and run a warrant check because information

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courts have engaged in a balancing test, weighing the minimally intrusive nature of the stop with the government's interests in crime detection, crime prevention and officer safety. For instance, in *State v. Ybarra*, the Arizona Appellate Court held that warrant checks are "incidental" to a valid investigatory stop and are minimally intrusive because "computerized data storage renders the time for a records check negligible." *Ybarra*, 156 Ariz. at 276, 751 P.2d at 1172. Likewise, in *State v. Madrigal*, the Washington Appellate Court stated that warrant checks are "reasonable" and "routine" in valid investigatory stops and, therefore, do not need to be supported by specific and articulable suspicion. *Madrigal*, 65 Wash. App. at 283, 827 P.2d at 1107. Furthermore, in *United States v. McRae*, the Tenth Circuit Court held that police officers engaged in the lawful detention of a suspect can always run a warrant check. The court reasoned: "Considering the tragedy of the many officers shot during routine traffic stops each year, the almost simultaneous computer check of a person's criminal record, along with his or her license and registration, is reasonable and hardly intrusive." *McRae*, 81 F. 3d at 1536 n.6.

Whether concluding that a warrant check is improper without independent reasonable suspicion, or concluding that a warrant check is always proper in the context of a *Terry* stop, the aforementioned courts have failed to address the fundamental question of whether a citizen, who may be a fugitive from justice, has a legitimate privacy interest, protected by the Fourth Amendment, in information regarding his criminal

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contained therein "could be as important to an officer's safety as knowing that the suspect is carrying a weapon"); *Ohio v. McFarland*, 4 Ohio App. 3d 158, 161, 446 N.E. 2d 1168, 1172 (1982) (based on reasonable suspicion that the suspect was involved in narcotics sales, it was reasonable for officers to detain the suspect in order to run a warrant check).

history. The clear answer is that the Fourth Amendment contemplates no such protection. Any other conclusion ignores the intent of the Framers, as set forth in the plain language of the Fourth Amendment, stating that the amendment is designed to protect citizens from unreasonable searches and seizures of "their persons, houses, papers, and effects." U.S. Const., amend. IV. Information regarding arrest records, pending charges and prior criminal convictions do not fall within any of these categories.

Application of the *Katz* standard to warrant checks makes this conclusion apparent. In order to cross the threshold set forth in *Katz*, it must first be established that individuals have a reasonable expectation of privacy in the information obtained through a warrant check. Records of criminal convictions, arrests, and pending criminal charges, all obtainable through a warrant check, are matters of public record. This Court has held that "interests in privacy fade when the information involved already appears on the public record." *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 494-95, 43 L. Ed. 2d 328, 349, 95 S. Ct. 1029, 1046 (1975). Consistent with this holding, courts have uniformly concluded that citizens have no reasonable expectation of privacy in their arrest and criminal records because such records are available for public consumption. See *Cline v. Rogers*, 87 F. 3d 176, 179 (6th Cir. 1996) (a person has no privacy right in his or her criminal history since arrest and conviction information are matters of public record); *Hodge v. James*, 31 F. 3d 157, 166 (4th Cir. 1994) (arrest and criminal records are matters of public record).[3]

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[3] See also *Paul P. v. Verniero*, 170 F. 3d. 396, 403 (3rd Cir. 1998) (holding that "arrest records and related information" are not protected by the Fourth Amendment); *Walls v. City of Petersberg*, 895 F. 2d 188, 193-94 (4th Cir. 1990) (constitutional right to privacy is not violated where an individual is required to disclose information freely available in public records); *Trade Waste Management Association Inc. v. Hughey*, 780 F. 2d 221, 234 (3rd

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As the dissent in *People v. Harris* cogently stated while asserting their position that the Fourth Amendment was plainly not implicated in the running of a warrant check:

> A warrant check is simply a computerized retrieval of information in the public record - information which indicates whether a court has entered a written order commanding the arrest of a specific person. (citations). Thus, a warrant check is never intrusive in the way that police questioning of a detained passenger can be. A warrant check involves no face-to-face exchange and does not even require the passenger's participation. It is never inquisitorial, confrontational, or suggestive of official interrogation. It does not invite, much less compel, an incriminating response. Further, the passenger has no reasonable expectation of privacy in the information retrieved during a warrant check, whether the police suspect the passenger of criminal activity or not. Accordingly, unless the warrant check impermissibly prolongs the passenger's detention—which was not the case here—no Fourth Amendment concerns arise." *Harris*, 207 Ill. 2d at 536-537, 802 N.E.2d at 232-33 (Fitzgerald, J., dissenting).

The Sixth Circuit recently subscribed to this same rationale in an unpublished opinion in *United States v. $14,000.00 in United States Currency*, No. 98-4380, 2000 U.S. App. Lexis 2429 (6th Cir. Feb. 14, 2000). There, the claimant was a passenger in a vehicle that was stopped because of a license plate violation. The officer ran a warrant check, which revealed that the claimant had prior drug convictions. After further questioning, the officer obtained consent to search the car from the car's driver, and ultimately conducted a pat down search on

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(...continued)
Cir. 1985) (records of criminal convictions and pending criminal charges are public by definition).

both the driver and the claimant. The searches revealed quantities of marijuana and a large amount of cash. On appeal, the claimant argued that his Fourth Amendment rights were violated when the officer ran the warrant check. The Sixth Circuit disagreed, reasoning that the Fourth Amendment was not implicated because the claimant had no legitimate expectation of privacy in computerized criminal history records. "We decline to find a legitimate expectation of privacy in computer criminal history records that are themselves derived (at least as concerns this case) from public records, and that are maintained for the express purpose of facilitating nearly instantaneous access to such information by law enforcement personnel in the performance of their duties." *U.S. v. $14,000*, No. 98-4380, 2000 U.S. App. Lexis 2429, at 7.

Even assuming, *arguendo*, that citizens have a privacy interest in warrant checks, the conclusion that the Fourth Amendment protects this interest does not pass muster. As this Court has repeatedly made clear, "the Fourth Amendment does not protect subjective expectations of privacy that are unreasonable or otherwise 'illegitimate.' (citations). To receive the protection of the Fourth Amendment, an expectation of privacy must be one that society is 'prepared to recognize as legitimate.'" *New Jersey v. T.L.O.*, 469 U.S. 325, 338, 83 L. Ed. 2d 720, 732, 105 S. Ct. 733, 741 (1985). It is unreasonable to conclude that a fugitive has a legitimate right to privacy regarding his status as a fugitive when he is out in public, and it is outrageous to conclude that society would recognize such a privacy interest as reasonable and justified.

Society has a compelling interest in keeping criminals off the streets and in keeping citizens safe. Citizens are generally kept safe through the efforts of law enforcement, and police officers are best able to protect citizens when they have access to necessary and useful public record information, such as that available through a warrant check, about individuals out in public who may be dangerous. The recognition of a privacy

interest in information contained in a warrant check undermines society's interest in public safety, places police officers in danger, and comes at a heavy cost to our communities. This danger is evident in the case at bar. To conclude otherwise would have placed the officers in the untenable position of walking away from a domestic situation without being afforded the opportunity to check the public records to ascertain whether respondent indeed posed a danger to the victim. Respondent was a fugitive from justice who was out in public behaving in an aggressive manner, with a loaded and cocked semiautomatic weapon concealed in the console of his car. If police officers had not run a warrant check on respondent, they would not have detected his fugitive status, nor would they have found the unlawful weapon. Respondent's interest in his status as a fugitive simply cannot be deemed legitimate in light of society's interest in finding fugitives, particularly those who are armed and dangerous, and bringing them to justice.

A finding that society is prepared to recognize a fugitive's privacy interest in his fugitive status is not only dangerous, it sends a confusing message to the public. It is well-settled that Fourth Amendment protections are trumped by a magistrate's finding of probable cause. See *Steagald v. United States*, 451 U.S. 204, 221-22, 68 L. Ed. 2d 38, 51, 101 S. Ct. 1642, 1652 (1981). Once respondent chose to evade authorities and disregard his court date, he knew that the police would be looking for him and that he would be immediately and legitimately arrested upon detection. The police officers had probable cause to believe that he committed the crime for which the warrant was issued and probable cause to believe that he was willfully evading authorities. Moreover, respondent could be prosecuted at any time for the underlying offense. It is unreasonable to require society to extend a privacy interest to respondent in information regarding the public record of his charged offense and warrant, for which police have probable cause to arrest him. This is particularly true because any privacy interest he possesses, while it may be

subjectively held, was certainly not legitimate in light of the magistrate's decision to issue an arrest warrant for respondent.

As this Court explained in *Rakas*:

> Obviously, *** a 'legitimate' expectation of privacy by definition means more than a subjective expectation of not being discovered. A burglar plying his trade in a summer cabin during the off season may have a thoroughly justified subjective expectation of privacy, but it is not one which the law recognizes as 'legitimate.' His presence, in the words of *Jones*, 362 U.S. at 267, is 'wrongful'; his expectation is not one that society is prepared to recognize as 'reasonable'." *Rakas*, 439 U.S. at 143 n. 12, 58 L. Ed. 2d at 402 n. 12, 99 S. Ct. at 430 n.12.

Fugitives subject to an arrest warrant simply have no legitimate expectation of privacy while evading criminal prosecution because they would possess no expectation of privacy if they were caught and ultimately confined in jail. *In re York*, 9 Cal. 4th 1133, 1150, 892 P.2d 804, 813 (1995); *State v. Thang*, 103 Wash. App. 660, 669, 13 P.3d 1098, 1103 (2000), *rev'd on other grounds*, 103 Wn. 2d 630, 41 P.3d 1159 (2001). The recognition of a privacy interest under these circumstances borders on the absurd, as society simply cannot be prepared to legitimatize a privacy interest which places the citizenry and law enforcement in danger and rewards criminal defendants for evading the criminal justice system.

B. ALTERNATIVELY, EVEN IF THIS COURT WERE TO CONCLUDE THAT THE RUNNING OF A WARRANT CHECK IMPLICATES THE FOURTH AMENDMENT, UNDER *HIIBEL V. NEVADA*, POLICE OFFICERS DO NOT NEED INDEPENDENT REASONABLE SUSPICION TO CONDUCT A WARRANT CHECK OF A SUSPECT'S NAME THAT WAS LEGITIMATELY OBTAINED DURING A VALID *TERRY* STOP, BECAUSE, ABSENT A WARRANT CHECK, THE AUTHORITY TO ASCERTAIN A SUSPECT'S NAME IS POINTLESS UNLESS A POLICE OFFICER PERSONALLY KNOWS THE BACKGROUND OF THE SUSPECT.

Assuming, *arguendo,* that the Fourth Amendment is implicated when police officers run a warrant check, the Illinois Appellate Court's decision in the case at bar would still be erroneous because a warrant check is always reasonably related to the purpose of a valid *Terry* stop. It is the least intrusive way to confirm or dispel suspicion, and should, thus, be considered routine and acceptable without any additional reasonable suspicion beyond that which justified the initial *Terry* stop. The requirement imposed by the Illinois Appellate Court, that police officers must have an independent reasonable and articulable suspicion of criminal activity to conduct the warrant check, runs afoul of fundamental Fourth Amendment principles of reasonableness and ignores legitimate governmental interests in officer and citizen safety and the detection and prevention of crime.

It is well settled that the propriety of any search or seizure rests on the fundamental principle of reasonableness. In deciding whether a particular governmental action is reasonable and complies with the Fourth Amendment, this Court first inquires whether the action was regarded as a lawful search and seizure under the common law. *Wyoming v. Houghton*, 526 U.S. 295, 299-300, 143 L. Ed. 2d 408, 414, 119

S. Ct. 1297, 1300 (1999). Where that inquiry yields no answer, this Court must then evaluate the search or seizure under traditional standards of reasonableness and must balance the intrusion upon an individual's privacy against the degree to which such intrusion is needed for the promotion of legitimate governmental interests. *Houghton*, 526 U.S. at 299-300, 143 L. Ed. 2d at 414, 119 S. Ct. at 1300.

A review of the common law, of course, does not directly answer the question of whether the running of a warrant check would have been considered lawful by the Framers of the Fourth Amendment, as this technology was obviously unavailable when the amendment was crafted. Therefore, assuming for the sake of argument that common law does not, by itself, answer the question of whether a warrant check complies with the Fourth Amendment[4], it is incumbent upon this Court to

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[4] The common law does establishes that, at the time the Framers crafted the Fourth Amendment, society had a compelling interest in imposing stiff penalties on those who intentionally evaded criminal prosecution. William Blackstone's Commentaries on the Laws of England supports the determination that, in the 1700's, the common law would not have recognized a subjective expectation of privacy in a person's fugitive status. In his commentaries, Blackstone specifically noted:

> "For flight also, on an accusation of treason, felony, or even petit larceny, whether the party be found guilty or acquitted, if the jury finds flight, the party shall forfeit his goods or chattels: for the very flight is an offence, carrying with it a strong presumption of guilt, and is at least an endeavour to elude and stifle the course of justice prescribed." William Blackstone, 4 Commentaries on the Laws of England 380 (1765-1769).

It is evident that at the time the Fourth Amendment was framed, a repugnance to flight was so embedded in society that those who fled faced harsh and sweeping legal consequences. Indeed, the fact that a fugitive, whether found guilty or acquitted of the underlying offense, lost an ownership or possessory

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evaluate warrant checks under traditional standards of reasonableness, weighing an individual's expectation of privacy against the government's interest in rooting out fugitives and bringing them to justice. See *Hensley*, 469 U.S. at 228-29, 83 L. Ed. 2d at 612, 105 S. Ct. at 680. In weighing the question now presented, this Court does not need to look much farther than its own recent decision in *Hiibel v. Nevada*, and the seminal case of *Terry v. Ohio*.

In *Hiibel*, this Court implied that the running of a warrant check was *per se* proper in the course of a valid investigatory stop. There, this Court stated that obtaining a suspect's identity is a "routine" and "accepted" part of a *Terry* stop, and held that the government can statutorily require a suspect to disclose his identity without violating his Fourth Amendment rights. *Hiibel*, 159 L. Ed. 2d at 303-04, 124 S. Ct. at 2458. This Court determined that the request for identity has an immediate relation to the purpose, rationale and practical demands of a *Terry* stop. This Court based its decision on the rationale that an individual's privacy right to information regarding his name was outweighed by the important government interest in obtaining identity information, as "knowledge of identity may inform an officer that a suspect is wanted for another offense, or has a record of violence or mental disorder." *Hiibel*, 159 L. Ed. 2d at 303, 124 S. Ct. at 2458.

However, as the *Hiibel* Court undoubtedly knew, knowledge of an individual's identity alone will not divulge information regarding his fugitive status, mental health issues or history of violence. The only way that information would come to light is through a warrant check. Thus, in recognizing that the ability to obtain information of this kind constituted a legiti-

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interest in his goods or chattels provides a clear indication that the common law would not recognize a person's subjective expectation of privacy in his fugitive status.

mate government interest which trumped Fourth Amendment protections, this Court implicitly recognized that a warrant check, like ascertaining a name, is a "routine" and "accepted" part of a *Terry* stop.

Unless the holding in *Hiibel* is intended to be strictly limited to rural areas, where law enforcement personnel are likely to personally know, or at least know of each person detained, the *Hiibel* rule logically must extend to the running of warrant checks. Police officers in large urban or suburban areas simply cannot have knowledge of a suspect's fugitive status, propensity for violence or history of mental illness without a warrant check to provide this information. In order for *Hiibel* to have any practical effect, once the police have legitimately obtained the name of a suspect detained in a valid *Terry* stop, the police officers must be able to run a warrant check. Like the request for identity, the running of warrant check on a name that was legitimately obtained has an immediate relation to the purpose, rationale and practical demands of a *Terry* stop. Any holding to the contrary would undermine the legitimacy of the governmental interests recognized in *Hiibel*.

Thus, decisions made in Illinois, as well as other jurisdictions throughout the country, which require a separate and distinct reasonable suspicion of criminal activity during the course of a *Terry* stop to legitimatize a warrant check of a detained suspect are contrary to this Court's precedent. See *Harris*, 207 Ill. 2d 515, 802 N.E. 2d 219, *pet. for cert. pending* (No. 03-1224); *Torres*, 347 Ill. App. 3d 252, 807 N.E.2d 654.[5]

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[5] See also *United States v. Christian*, 356 F. 3d 1103 (9th Cir. 2004); *United States v. Boyce*, 351 F. 3d 1102 (11th Cir. 2003); *People v. Jackson*, 39 P.3d 1174 (Colo. 2002); *Sikes v. State*, 323 S.C. 28, 448 S.E. 2d 560 (1994); *State v. Johnson*, 805 P.2d 761 (Utah 1991); *Brown v. State*, 124 Md. App. 183, 720 A.2d 1270 (1998); *State v. Chelly*, 94 Wash. App. 254, 970 P. 2d 376 (1999).

Not only do these cases, which includes the instant cause, run afoul of the principles set forth in *Hiibel*, they likewise deviate from this Court's mandate in *Terry v. Ohio*. In *Terry*, this Court stated that the propriety of a Fourth Amendment search should be determined by inquiring whether the officer's action was justified at its inception and whether it was reasonably related in scope to the circumstances which justified the interference in the first place. *Terry*, 392 U.S. at 20, 20 L. Ed. at 905, 88 S. Ct. at 1879. When the *Terry* test is applied to the running of warrant checks pursuant to a valid *Terry* stop, it becomes readily apparent that warrant checks will be reasonably related to the circumstances justifying the initial interference in nearly every circumstance. A warrant check, like ascertaining a name, will always aid in confirming or dispelling the suspicion which formed the basis of the initial stop and will likewise aid in confirming or dispelling an officer's concerns regarding his own personal safety and the safety of the public.

As this Court recognized in *Hiibel*, it is necessary for police officers to learn whether a suspect stopped pursuant to *Terry* is wanted for another offense, is known to be armed, dangerous, violent or mentally ill. The need for this information to alleviate reasonable suspicion is demonstrated by the facts of the case at bar. Here, police officers approached respondent because they saw him, "a very large male," with his arms "flying" in the direction of "a very young smaller female" who was sitting in a "very submissive" position. (Appendix C, App. 36, Appendix A, App. 2). After speaking to respondent and his girlfriend, they learned that the couple were fighting over an extremely volatile issue—respondent's alleged infidelity. (Appendix A, App. 3). The officers reasonably suspected that a domestic violence altercation had taken place or was about to take place, and needed to investigate further to ensure their safety, as well as the safety of the potential victim.

The least intrusive, and most reasonable way to dispel the officers' suspicions was to run a warrant check. The check

would reveal whether the suspect was wanted for any other offenses, such as violating an order of protection. It would likewise reveal whether the suspect had a history of violence or mental illness and whether he could potentially be armed. Significantly, this pertinent information could be obtained without having to question the suspect, thus limiting his exposure to the danger of self-incrimination. Notably, the computer check of public records does not require any contact between the officers and the suspect, nor any participation from the suspect whatsoever. Moreover, the information needed to dispel or confirm the officers' concerns could be obtained in a matter of seconds, through an unintrusive computer check. Contrary to the Illinois Appellate Court's determination in this case, the minimal time it took to conduct the warrant check did not fundamentally change the scope or the temporary nature of the *Terry* stop. It was simply part and parcel of the *Terry* stop itself and did not convert it into something other than a legitimate *Terry* stop under the Fourth Amendment.[6] Hence, in the instant case, the warrant check was sufficiently unintrusive to be constitutionally permissible under *Terry* in light of the compelling societal interests and respondent's lack of a reasonable expectation of privacy in the public record of the arrest warrant issued against him.

As stated previously herein, when determining whether a search is valid under the Fourth Amendment, courts are instructed to remain focused on fundamental principles of reasonableness while weighing the intrusion upon an individual's privacy interest against the degree to which such intrusion is needed for the promotion of legitimate governmental interests. *Houghton*, 526 U.S. at 299-300, 143 L. Ed. 2d at 414,

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[6] The question before this Court does not include a situation where the running of a warrant check unreasonably extended the duration or changed the nature of the *Terry* stop, *i.e.* where a suspect is held for an inordinate amount of time because the computer system is down or where officers take the suspect to the police station to conduct the warrant check.

179 S. Ct. at 1300. This case makes clear that the running of a warrant check is imminently reasonable and should be considered a *per se* acceptable part of every *Terry* stop. A warrant check provides police officers with a minimally intrusive mechanism for confirming or dispelling the initial reasonable suspicion which gave rise to the *Terry* stop at the outset of the police/suspect encounter. Any other conclusion can only be characterized as unreasonable and one which society would be unwilling to accept as justified. Indeed, it is doubtful that society is willing to declare that the minimal intrusion into a suspect's criminal history resulting from a warrant check trumps society's interest in good, thorough police work which ultimately keeps citizens safe with great benefit to law enforcement and little detriment to criminal suspects.

Nevertheless, until this Court makes an explicit, rather than implicit finding with respect to warrant checks in the context of *Terry* stops, courts may continue to erroneously find that a distinct reasonable and articulable suspicion of criminal activity is required before a warrant check can be lawfully conducted. This is precisely the error committed by the Appellate Court in the instant case. This, of course, would be in derogation of *Hiibel*, *Terry*, and other case law throughout the country which conforms to the principles these cases have espoused. See, *e.g. McRae*, 81 F. 3d 1528; *Madrigal*, 65 Wash. App. 279, 827 P. 2d 1105; *Ybarra*, 156 Ariz. 276, 751 P. 2d 592. This creates an untenable situation for law enforcement officials on a daily basis. The current state of the law makes it difficult for police officers to run a warrant check, and subsequently apprehend a fugitive, without fear that their conduct may eventually be characterized as a Fourth Amendment violation. This sort of uncertainty can only result in the type of police work this Court warned against in *Adams v. Williams*, 407 U.S. 143, 145, 32 L. Ed. 2d 612, 616-17, 92 S. Ct. 1921, 1923 (1972), when it stated:

> "The Fourth Amendment does not require a policeman who lacks the precise level of information necessary

> for probable cause to arrest to simply shrug his shoulders and allow crime to occur or a criminal to escape. On the contrary, *Terry* recognized that it may be the essence of good police work to adopt an intermediate response."

Officers should not have to ignore the existence of the initial reasonable and articulable suspicion that a suspect is involved in criminal activity and hope that other factors surface that establish independent reasonable and articulable suspicion before they are authorized to run a warrant check on a suspect. Such an interpretation of the Fourth Amendment is not only absurd, but it will certainly have a devastating impact on law and order and the safety of our communities, particularly in the crime-plagued urban and suburban communities.

C. THE ILLINOIS APPELLATE COURT'S OPINION CONCERNS AN IMPORTANT QUESTION OF FEDERAL CONSTITUTIONAL LAW WHICH SHOULD BE DECIDED BY THIS COURT TO GIVE NEEDED GUIDANCE TO LOWER COURTS AND LAW ENFORCEMENT OFFICIALS THROUGHOUT OUR NATION.

It is clear that both State and Federal authorities have created a confusing situation for police officers and courts alike with regard to the appropriate use of the warrant check in the context of a valid *Terry* stop. Given the fact that warrant checks are frequently conducted by police officers, combined with the fact that the information obtained or not obtained through a warrant check can impact an officer's safety, as well as the safety of the individuals subject to the warrant check and others in the community, the existing conflict warrants swift resolution by this Court. The present case provides this Court with the ideal opportunity to consider and resolve this pressing issue.

Significantly, the facts of this case make it particularly ripe for this Court's consideration because respondent was not merely a bystander present during a criminal investigation who became the subject of a warrant check. Rather, respondent was the actual individual suspected of engaging in criminal activity, namely, domestic violence, an extremely serious and dangerous offense. These facts are significant because, under the precedent set by the Illinois Appellate Court in this case, police officers can no longer freely run a warrant check on an individual they suspect of criminal activity for safety reasons or in the course of good police investigation. Instead, officers must first assess whether they have a specific and articulable reasonable suspicion to run the warrant check. This encompasses an assessment of whether the reasonable suspicion warranting the initial stop has been dissipated by some external factor, such as a potential domestic violence victim reporting that she is "okay" in the presence of her would-be abuser, who is within arms' reach of a loaded and cocked semi-automatic weapon.[7]

Police officers are simply being prohibited from doing good police work, and this prohibition presents a grave danger to them as well as the communities they serve. This Court has stressed that "reasonable suspicion" is a commonsense, nontechnical concept that deals with "the factual and practical considerations of everyday life in which reasonable and prudent men, not legal technicians act." *Ornelas v. United States*, 517 U.S. 690, 695, 116 S. Ct. 1657, 1661, 134 L. Ed. 2d 911, 918 (1996), *quoting Illinois v. Gates*, 462 U.S. 213, 231, 76 L. Ed. 2d 527, 544, 103 S. Ct. 2317, 2328 (1983). However, the Appellate Court's dissipation analysis virtually requires that police officers become legal technicians by forcing them to ignore the everyday reality that domestic violence victims often lie to authorities about the abuse they suffer at the hands of their domestic partners.

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[7] The Appellate Court's finding that the *Terry* stop was dissipated by Ms. Cordero's indication that she was "okay" is rendered fundamentally incorrect by *Hiibel*.

As stated herein, this Court has recently recognized, in *Hiibel v. Nevada*, the need for police officers to have the ability to conduct relevant and necessary investigation. This Court held that law enforcement officers with a reasonable suspicion of criminal activity must be able to detain a suspect for a brief time to obtain additional information. *Hiibel*, 159 L. Ed. 2d at 302-03, 124 S. Ct. at 2458. In that vein, this Court declared that obtaining a suspect's identity was an integral part of that process and implied that running a warrant check was likewise a necessary and integral part. *Hiibel*, 159 L. Ed. 2d at 302-03, 124 S. Ct. at 2458. As this Court cogently explained:

> "Knowledge of identity may inform an officer that a suspect is wanted for another offense, or has a record of violence or mental disorder. On the other hand, knowing identity may help clear a suspect and allow the police to concentrate their efforts elsewhere. *Identity may prove particularly important in cases such as this, where police are investigating what appears to be a domestic assault. Officers called to investigate domestic disputes need to know whom they are dealing with in order to assess the situation, the threat to their own safety, and possible danger to the potential victim.*" (Emphasis added.) *Hiibel*, 159 L. Ed. 2d at 303, 124 S. Ct. at 2458.

The rationale applied in *Hiibel* with respect to identity information applies with respect to warrant checks, and is equally compelling because, like a name check, a warrant check is an essential part of police investigation. *Hiibel*, 159 L. Ed. 2d at 302, 124 S. Ct. at 2458. A warrant check should, therefore, be considered a reasonable and necessary component of a law enforcement officer's investigatory authority under *Terry* and should not have to be supported by independent reasonable and articulable suspicion of criminal activity.

This Court should grant certiorari to resolve this important and recurring question of federal law in order to ensure uniformity among the courts, to provide law enforcement

officers with clear guidance and to secure a police officer's ability to conduct a complete and effective *Terry* investigation in urban and suburban areas.

CONCLUSION

For all the foregoing reasons, the Petitioner respectfully prays that this Honorable Court grant the instant petition for Writ of Certiorari to review the judgment of the Illinois Appellate Court. In the alternative, this petition should be held pending consideration of the petition for Writ of Certiorari in *Illinois v. Harris*, No. 03-1224.

Respectfully submitted,

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